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Congress of the United States
House of Representatives
Washington, DC 20515-0530

HENRY A. WAXMAN
30TH DISTRICT, CALIFORNIA

March 15, 2006

Mr. Cal Dooley
President
Food Products Association
1350 I (Eye) Street, NW, Suite 300
Washington, DC 20005

Dear Mr. Dooley:

I am deeply concerned about misunderstandings related to state regulation of food safety that appeared to run rampant during the recent consideration of H.R. 4167 in the House of Representatives. I am writing to get your assistance to help clarify the record on this important issue.

As I have talked to members of the House over the last few days, I have discovered a perception that food companies are currently required to print many different food packaging labels in order to comply with differing requirements across the states. In fact, some members are under the impression that companies are printing a different label for each state -- 50 different labels -- due to numerous conflicting state requirements.

I believe that this is a factually inaccurate view of what is required by the states. Unfortunately, I believe that this view may be reinforced by statements like this one from the Food Products Association:

“You could have two different labels, three different labels, 50 labels depending on inconsistent state requirements,” says Hunt Shipman, executive vice president at the Food Products Association, a trade group.¹

As you know, the “National Uniformity for Food Act” has been introduced in each of the last five Congresses—yet there has never been any hearing in either the House or the Senate to understand the impacts of, or factual basis for, the legislation, including statements like those of the Food Products Association.


¹ *Food Industry Advances In Labeling Fight: Bill in Congress Would Ban Many State, Local Rules And Set National Regulations*, Wall Street Journal (Jan. 9, 2006).

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In order to understand the factual basis for Mr. Shipman's statement, I would appreciate answers to the attached questions no later than March 24, 2006.

Thank you for your immediate attention to this request.

Sincerely,



Henry A. Waxman
Member of Congress

Questions for the Food Products Association

1. The Congressional Budget Office found that, if H.R. 4167 were enacted, states would likely file 200 petitions to retain state safety standards and notification requirements. Similarly, the consumer protection group Center for Science in the Public Interest (CSPI) and the environmental group Natural Resources Defense Council (NRDC) recently released a report that identifies 196 state laws that could be preempted by H.R. 4167.² The state agricultural commissioners have also repeatedly explained their concerns that many laws, such as those that govern milk and shellfish safety, may be preempted.³ However, the proponents of the legislation have never provided a list of the state laws that they believe would be preempted if a state did not receive permission from the Food and Drug Administration (FDA) to keep them in place.
 - a. The vast majority of state laws identified by CSPI and NRDC – approximately 160 of the 196 laws identified – have to do with safety standards, not labeling requirements. Please provide a list of state safety standards that you believe will be preempted by this legislation if FDA does not permit a state to maintain such laws.
 - b. A leading proponent of H.R. 4167 has stated, “Making consumers deal with 50 different labeling requirements is not without cost. In effect, it divides America into 50 different markets where each of the products cost the consumer just a little more to buy.”⁴ However, fewer than 40 of the 196 laws identified by CSPI and NRDC establish notification requirements. Please provide a list of state notification requirements that you believe will be preempted by this legislation if FDA does not permit states to maintain such laws.
2. Proponents of the legislation have repeatedly implied that there are conflicting state requirements that unnecessarily complicate the ability of the food industry to bring products to market. In addition to the Food Products Association statement regarding “inconsistent” state laws, one proponent of the legislation has stated

If enacted, this important legislation would set much-needed national standards for food safety and put an end to the confusing and often contradictory standards that exist across many States.⁵

² Center for Science in the Public Interest & Natural Resources Defense Council, *Shredding the Food Safety Net: a Partial Review of 200 State Food Safety and Labeling Laws Congress is Poised to Effectively Kill with H.R. 4167* (Mar. 2006) (online at <http://www.cspinet.org/new/pdf/shredding.pdf>).

³ See, Website of Rep. Henry A. Waxman, H.R. 4167: Statements of Opposition from the States and Other Groups (March 2006) (online at http://www.house.gov/waxman/issues/health/food_safety_hr_4167_letters_opposition.htm).

⁴ Statement of Rep. Nathan Deal, Congressional Record, H530 (Mar. 2, 2006).

⁵ Statement of Rep. Sanford Bishop, Congressional Record, H536 (Mar. 2, 2006).

However, none of the fewer than 40 state laws identified by CSPI and NRDC which establish notification requirements appear to actually conflict.

- a. In order to help Congress better understand where conflicts between state laws exist, please provide a list of any laws of which you are aware that conflict between the states.
 - b. In order to understand the basis for claims that state laws confuse consumers and lead them to make unsound decisions,⁶ please provide any factual basis for these claims, such as market research or scientific studies.
3. Proponents of this legislation seem to imply that state laws regarding food safety and labeling may not be based upon sound science. For example, the legislation's leading proponent stated:

if [the states] have a standard based on good science that says, hey, we think that this food ought to have this warning label, then come to the FDA, show us the science, so we can share it with the rest of the country.⁷

Another proponent stated:

If a warning about food is supported by science, then consumers in all 50 States should have the benefit of this warning.⁸

In order to help Congress better understand where the industry believes that states have relied upon faulty science, please provide a list of any state laws of which you are aware that are based on faulty science.

⁶ See, e.g., statement of Rep. Steve King, Congressional Record, H731 (Mar. 8, 2006).

⁷ Statement of Rep. Mike Rogers, Congressional Record, H532 (Mar. 2, 2006).

⁸ Statement of Rep. Steve King, Congressional Record, H731 (Mar. 8, 2006).